

APR 15 2004

Before the  
**Federal Communications Commission**  
 Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

In the Matter of	)	MM Docket No. 01-65
	)	RM-10078
Amendment of Section 73.202(b),	)	RM-10188
	)	RM-10189
Table of Allotments,	)	
FM Broadcast Stations.	)	
(Emmetsburg, Sanborn and Sibley, Iowa,	)	
and Brandon, South Dakota)	)	

To: The Commission

**APPLICATION FOR REVIEW**

Saga Communications of Iowa, LLC ("Saga"), by its attorneys and pursuant to Section 1.115 of the Commission's Rules, hereby files this application for full Commission review of the action by the Assistant Chief, Audio Division, Media Bureau ("Audio Division") taken in the Memorandum Opinion and Order, *Emmetsburg, Sanborn and Sibley, Iowa, and Brandon, South Dakota*, DA 04-363, 69 Fed. Reg. 12277, published March 16, 2004 ("MO&O").<sup>1</sup> The action taken in the MO&O should be reversed, and Channel 261C3 should be allotted to Brandon, South Dakota. In support whereof, Saga shows the following:

**Background**

Saga filed a counterproposal to the Commission's proposed amendment of Section 73.202(b) of the Rules as set forth in the Commission's *Notice of Proposed Rule Making, Emmetsburg and Sibley, Iowa*, 16 FCC Rcd 4932 (MMB 2001) ("NPRM").

That NPRM was issued at the request of the former licensee of KDWD, Eisert

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Enterprises, Inc.<sup>2</sup>, and proposed to (a) delete Channel 262A from Sibley, Iowa, and (b) substitute Channel 261C3 for Channel 261A at Emmetsburg, Iowa, with a corresponding modification of the license of KDWD (formerly KEMB), Emmetsburg, to operate on Channel 261C3. Instead, Saga proposed to substitute Channel 261C3 for vacant Channel 261A at Brandon, South Dakota. In its Report and Order in this proceeding, *Emmetsburg, Sanborn and Sibley, Iowa, and Brandon, South Dakota*, 17 FCC Rcd 18308 (MMB 2002), the Audio Division denied Saga's counterproposal. Saga then sought reconsideration of the Report and Order pursuant to Section 1.429 of the FCC's rules. In its MO&O, the Audio Division denied Saga's petition for reconsideration, and this application for review followed. As shown, herein, the Audio Division erred in the MO&O. Channel 261C3 should have been allotted to Brandon, South Dakota.

It should be noted that an application (File No. BPH-20021113AAS) for construction permit was granted for the use of Channel 261C3 at Emmetsburg by KDWD, but the permit was expressly conditioned on the outcome of this docket, and that a license would not be granted to cover the permit until this docket becomes final. Thus, the current licensee of KDWD, Jim Dandy Broadcasting, Inc., is on notice that its operating authority for KDWD as a Class C3 station could be rescinded.

### **Question Presented for Review**

The following question is presented for review:

**Whether the Audio Division erred in issuing the MO&O based on a material question of fact; i.e., incorrect population figures.**

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<sup>1</sup> Pursuant to Section 1.115(d), this Application for Review is timely filed within 30 days of Public Notice, or by April 15, 2004.

<sup>2</sup> Pursuant to File No. BALH-20021119ABG, the license of KDWD was assigned effective January 13, 2003, to Jim Dandy Broadcasting, Inc., the current licensee.

Section 1.115(b) of the Rules requires the successful applicant to show, among several factors, why Commission review is warranted. In this case, Factor (iv) warrants Commission review of the action of the Audio Division; i.e., the MO&O was based on an erroneous finding as to an important or material question of fact.

### **Relief Requested**

Saga respectfully requests the Commission to require the Audio Division Staff to carefully re-examine the data on which the MO&O is based, and if that re-examination supports Saga's evidence herein, to reverse the action taken in the MO&O, returning KDWD to Class A status, and allotting Channel 261C3 to Brandon, South Dakota.

### **Basis of Request for Relief**

In the Report and Order, the Audio Division denied Saga's counterproposal on the grounds that the upgrade of KDWD would provide additional service to 28,607 persons while upgrading Channel 261C3 at Brandon would provide additional service to 26,223 persons, a difference of only 2,384 persons, yet a decisionally significant difference.

In its Petition for Reconsideration, Saga showed that the Commission had based its decision on 1990 U. S. Census Data, and that using 2000 U. S. Census Data, the situation would be almost exactly reversed. That is, the allotment of Channel 261C3 to Brandon would result in additional service to 27,274 persons while upgrading KDWD at Emmetsburg would result in additional service to only 24,939 persons, a difference of 2,335 persons in favor of allotting channel 261C3 to Brandon.

In its MO&O, the Audio Division inexplicably rejected Saga's showings. The Audio Division stated that, based on its own engineering review of the respective proposals using the "block centroid data available from the 2000 U. S. Census," it

determined that the proposed upgrade at Emmetsburg would result in additional service to 28,929 persons based upon existing service to 24,961 persons and proposed service to a total of 53,990 persons. The Audio Division found that the Brandon proposed upgrade would result in additional service to 24,614 persons based upon the current allotment at Brandon serving 159,139 persons and the proposed Class C3 allotment serving 183,753 persons. That would result in a difference of 4,315 persons and would tip the scales in favor of Emmetsburg; however, the data on which the Audio Division based its MO&O is incorrect. As set forth *infra*, proper analysis of the data reflects that Channel 261C3 should be allotted to Brandon, South Dakota.

### **The MO&O Is Based on an Error in Fact**

Saga has made every reasonable effort to verify the Audio Division's findings, but has been unable to do so. Attached hereto are declarations from three separate independent technical consultants, William G. Brown, of Bromo Communications, Inc., John J. Mullaney of Mullaney Engineering, Inc., and Jacob L. Byers of Doug Vernier Telecommunications. All three support Saga's contention that the upgrade of Channel 261C3 at Brandon, South Dakota, would result in service to greater population than the upgrade of KDWD at Emmetsburg, Iowa.

#### **Findings of William G. Brown, Bromo Communications, Inc.**

Attachment A is a statement from William G. Brown, Saga's Technical Consultant, who prepared the technical studies submitted in this docket. Mr. Brown states that he has taken "an involved look" into the calculation of population data within

the respective 60 dBU contours of the two proposals. Mr. Brown states that Saga's proposal for Brandon will net 1,662 persons more than the proposal to upgrade KDWD.<sup>3</sup>

Findings of John J. Mullaney of Mullaney Engineering, Inc.

Attachment B is a statement from John J. Mullaney of Mullaney Engineering, Inc. Mr. Mullaney concludes that the upgrade at Brandon would result in 1,590 persons more than the proposal to upgrade KDWD. Additionally, Mr. Mullaney points out that there is an arithmetical error in the MO&O. In Paragraph 4, the Audio Division states:

Based on this data, we have determined that the proposed upgrade at Emmetsburg will now result in additional service to 28,929 persons. This calculation is based upon existing service to 24,961 persons and a proposed service to a total of 53,990 persons.

However, 53,990 minus 24,614 equals 29,376, not 28,929. This arithmetical error calls into question the degree of care exercised by the Audio Division's technical staff in analyzing the population data, and mandates a review by the Commission of the methods used by the Audio Division staff in reaching its conclusion.

Findings of Jacob L. Byers of Doug Vernier Telecommunications.

Attachment C is a Statement from Jacob L. Byers of Doug Vernier Telecommunications who states that he examined the population figures related to KDWD's proposed upgrade and the proposed upgrade at Brandon, South Dakota. Mr. Byers found that there would be 2,386 more persons served by the allotment of Channel 261C3 to Brandon, South Dakota, than the upgrade of KDWD at Emmetsburg.

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<sup>3</sup> Mr. Brown states that in his filing supporting Saga's January 23, 2003, Reply to Opposition to Petition for Reconsideration he found the difference to be 1,766 persons. He attributes the difference of 104 persons to revised computer software used in calculating the figures.

In all three cases, the technical consultants, while not agreeing precisely on the number of persons to be gained, do agree that the Brandon proposal is superior to the Emmetsburg proposal.<sup>4</sup>

*In view of this overwhelming evidence of mistake, the Audio Division's staff should be required to re-examine the data and methodology used to develop the MO&O. Should the Commission refuse to reverse the Audio Division, the Commission should, in its decision explain in detail the basis of the data underlying its decision so that the matter can be examined by other reviewing authorities.*

In the case at bar, the upgrade of Channel 261A at Brandon to Channel 261C3 will serve a greater net number of persons than the proposal to upgrade KDWD.

#### **Continued Expression of Interest**

As Saga has previously stated, if the Commission allots Channel 261C3 to Brandon, South Dakota, Saga, or an affiliate, will during the applicable future filing window, file an application on FCC Form 175 in order to participate in any future auction and will participate in any such auction (if one or more mutually-exclusive Forms 175 are timely filed). If Saga's application is a "singleton," (i.e., not mutually exclusive with another application for the same construction permit), or if Saga is the successful high bidder at the auction, Saga will timely file FCC Form 301 (long-form application) for construction permit for a new commercial radio station on Channel 261C3 at Brandon, South Dakota, and if Saga obtains a grant of the construction permit, Saga will timely construct a new station in compliance with the Commission's construction permit authorized as a result of this allotment.

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<sup>4</sup> Mr. Brown discusses in his Statement the reason why there are small differences in the population figures as determined by the three technical consultants.

### **Conclusion**

In light of the above, the Commission should reverse the Audio Division's MO&O, deny the KDWD proposal, and instead, delete Channel 262A at Sibley, Iowa, and substitute Channel 261C3 for Channel 261A at Brandon, South Dakota, as described herein.

Respectfully submitted,

**SAGA COMMUNICATIONS  
OF IOWA, LLC**

A handwritten signature in black ink, appearing to read 'Gary S. Smithwick', written over a horizontal line.

By: \_\_\_\_\_  
Gary S. Smithwick  
Its Attorney

**Smithwick & Belendiuk, P.C.**  
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Washington, DC 20016  
(202) 363-4050

April 15, 2004

## ATTACHMENT A

**TECHNICAL COMMENTS**  
**SUPPORTING APPLICATION FOR REVIEW**  
**Allotment of Channel 261C3 at Brandon, South Dakota**  
April 2004

These comments support the application for review by Saga Communications of Iowa ("Saga") in MM Docket No. 01-65, RM-10078, RM-10188, RM-10189. The proposal would either upgrade KDWD at Emmetsburg, Iowa to a Class C3 facility or upgrade allocated Channel 261A at Brandon, South Dakota to Class C3.

In the Audio Division's Memorandum Opinion and Order, the overall gain of population was the determining factor in granting the upgrade to Eisert and thus the Saga proposal was denied at Brandon.

Since population was the factor in the Commission's decision on this matter. We continually have checked our population figures over the time of this proceeding. We also respectfully disagree with the Commission's calculations that the Eisert application is superior to the Saga proposal at Brandon. We again have taken an involved look into the calculation of population data within the respective 60 dBu contours.

Result of our engineering study:		Result of Commission's Study:	
KDWD Present Class A	24,463		24,961
KDWD Proposed Class C3	49,908		53,990
Gain	25,445		28,929
Brandon Class A	159,479		159,139
Brandon Class C3	186,586		183,753
Gain	27,107		24,614

Thus the Saga Proposal at Brandon will net 1,662 persons more than the Eisert proposal to upgrade KDWD. In our filing of January 2003 we found the difference figure to be 1,766 persons. We attribute the difference of 104 persons to revised computer software used in calculating these figures. The newer software allows us to decrease the population cells which more accurately determine the population when these cells are divided by the 60 dBu contour.

We based our KDWD figures on the 2000 US Census. We assumed KDWD at their present Class A facility and the proposed upgrade as a maximum Class C3 facility.

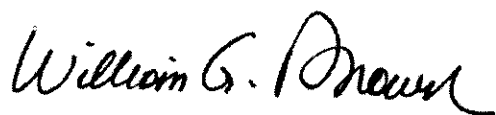
We based our Brandon figures on the 2000 US Census. We assumed Brandon as a maximum Class A and maximum Class C3 facility.

Thus we have checked our population figures with several different methods, we have used the 1990 and the 2000 US Census figures and more than one computer algorithm to calculate these population values. We believe our figures to be as accurate and correct as the current state of the art allows.

Attached to this Application For Review are statements from two other engineering consulting firms that have been asked to independently review the population figures in this application. To be expected the results of each report varies slightly. For example, the Mullaney engineering report shows an overall population gain of 1,590 persons for the Saga proposal at Brandon, the V-Soft calculation gives it to Saga with 2,386 persons and our (Bromo) calculations show 1,662 more for the Saga proposal. The differences can easily be explained as each firm used slightly different methods of calculating the 60 dBu contour. Mullaney used the 30 second terrain database and 360 radials, V-Soft used the 3 second data base and 360 radials while Bromo used the 3 second database and 36 radials. Additionally the Mullaney figures assumed the CP site and facility while V-Soft and Bromo assumed maximum class facilities from the allocation site. Therefore, it simply proves there will be slight differences in population calculations. On the other hand the Commissions numbers differ greatly with these three firms by about 6,000 persons. Thus giving a 4,315 person advantage to KDWD. It is the opinion of all three Engineering firms that the Commission's figures are in error.

The undersigned declares under penalty of perjury that the foregoing is true and correct to the best of his information and belief.

Bromo Communications, Inc.

A handwritten signature in black ink, reading "William G. Brown". The signature is written in a cursive, flowing style with a large, prominent "W" and "B".

William G. Brown

## ATTACHMENT B

JOHN J. MULLANEY  
JOHN H. MULLANEY, P.E. (1994)  
ALAN E. GEARING, P.E.  
TIMOTHY Z. SAWYER

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**ENGINEERING EXHIBIT EE:**

**APPLICATION FOR REVIEW  
FM TABLE OF ALLOTMENTS  
EMMETSBURG, SANBORN AND SIBLEY, IOWA  
AND BRANDON, SOUTH DAKOTA  
MM DOCKET 01-65**

**APRIL 13, 2004**

Prepared on Behalf of  
Saga Communications

**ENGINEERING EXHIBIT EE:**

**APPLICATION FOR REVIEW  
FM TABLE OF ALLOTMENTS  
EMMETSBURG, SANBORN AND SIBLEY, IOWA  
AND BRANDON, SOUTH DAKOTA  
MM DOCKET 01-65**

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1. Declaration of Engineer
2. Narrative Statement
3. Figure 1, Summary of Technical Facilities.
4. Figure 2, 60 dBu Coverage Comparison Map.

## Declaration

I, John J. Mullaney, declare and state that I am a graduate electrical engineer with a B.E.E. and my qualifications are known to the Federal Communications Commission, and that I am an principal engineer in the firm of Mullaney Engineering, Inc., and that I have provided engineering services in the area of telecommunications since 1977. My qualifications as an expert in radio engineering are a matter of record with the Federal Communications Commission.

The firm of Mullaney Engineering, Inc., has been requested by Saga Communications to prepare the instant engineering exhibit in support of an application for review in MM Docket 01-65 concerning an amendment to the FM Table of Allotments.

All facts contained herein are true of my own knowledge except where stated to be on information or belief, and as to those facts, I believe them to be true. I declare under penalty of perjury that the foregoing is true and correct.

  
John J. Mullaney, Consulting Engineer

Executed on the 13th day of April 2004.

### Summary

Saga Communications herein files an application for review of the MO&O in MM Docket 01-65. As presented herein Saga has demonstrated that the upgrade of the Brandon allotment **results in a larger gain** population than does the upgrade of the KDWD allotment. Saga has documented the technical data upon which it draws this conclusion. However, the computations presented by the FCC staff in the MO&O contain no supporting data (FCC population numbers definitely contain a mistake). Because of the large lack of agreement between the Saga & FCC population numbers it is clear that technical errors have been made in the computation of those population numbers and **Saga believes those errors were made by the FCC**. Based upon Saga's population numbers the Brandon, SD, C3 upgrade provides the largest population gain and therefore, should result in a preferential arrangement of allotments when compared to the C3 upgrade operation by KDWD at Emmetsburg, IA and this is **contrary to the conclusions** reached in MM Docket 01-65.

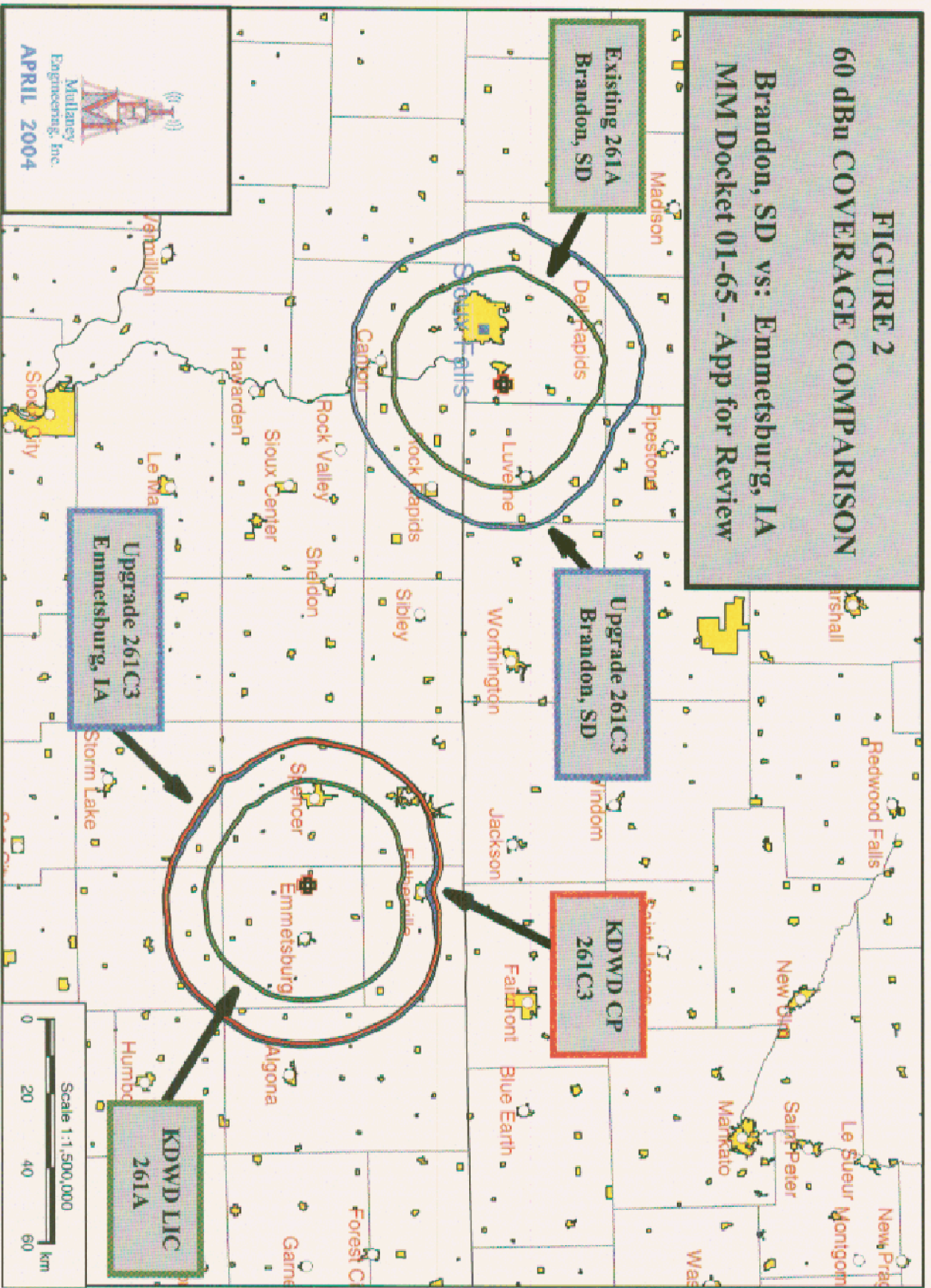
  
John J. Mullaney, Consulting Engineer

April 13, 2004.

FIGURE 2

60 dBu COVERAGE COMPARISON

Brandon, SD vs: Emmetsburg, IA  
MM Docket 01-65 - App for Review



## ATTACHMENT C



**Technical Statement Concerning KDWD and Brandon, SD Allotment**  
April 13, 2004

As a member of the Doug Vernier Telecommunications consulting staff, I have examined the population figures related to KDWD's upgrade from a class A to a class C3 (the current construction permit), and the upgrade of Brandon, SD vacant channel 261 from a maximum class A to a maximum class C3. The results of the total populations are shown in the table below.

Station	Population in 60 dBu contour
KDWD Class A	24,466
KDWD Class C3 CP	49,354
Brandon, SD Max Class A	159,332
Brandon, SD Max Class C3	186,606

The population increase that would be created by the KDWD upgrade to a C3 is 24,888 people. The population increase that would be created by upgrading the Brandon, SD max class A allotment to a max class C3 is 27,274 people. The Brandon, SD upgrade has 2,386 more people in its upgrade area than KDWD.

The population figures above were obtained using our Probe 3 software with 2000 U.S. SF1 block level census information, using block centroid data and 360 equally spaced bearings. Distances for intermediate bearings are based upon linear interpolation of adjacent bearings. Population centroids were counted when the distance to the centroid was less than the distance to the 60 dBu contour along the same azimuth.

A change area map of the stations discussed in this statement is included.

A handwritten signature in black ink, appearing to read 'Jacob L. Byers'.

Jacob L. Byers  
jbyers@v-soft.com

# FCC 60 dBu Coverage

Brandon\_C3  
Latitude: 43-36-01 N  
Longitude: 096-31-15 W  
Class C3  
ERP: 25.00 kW  
Channel: 261  
Frequency: 100.1 MHz  
AMSL Height: 539.13 m

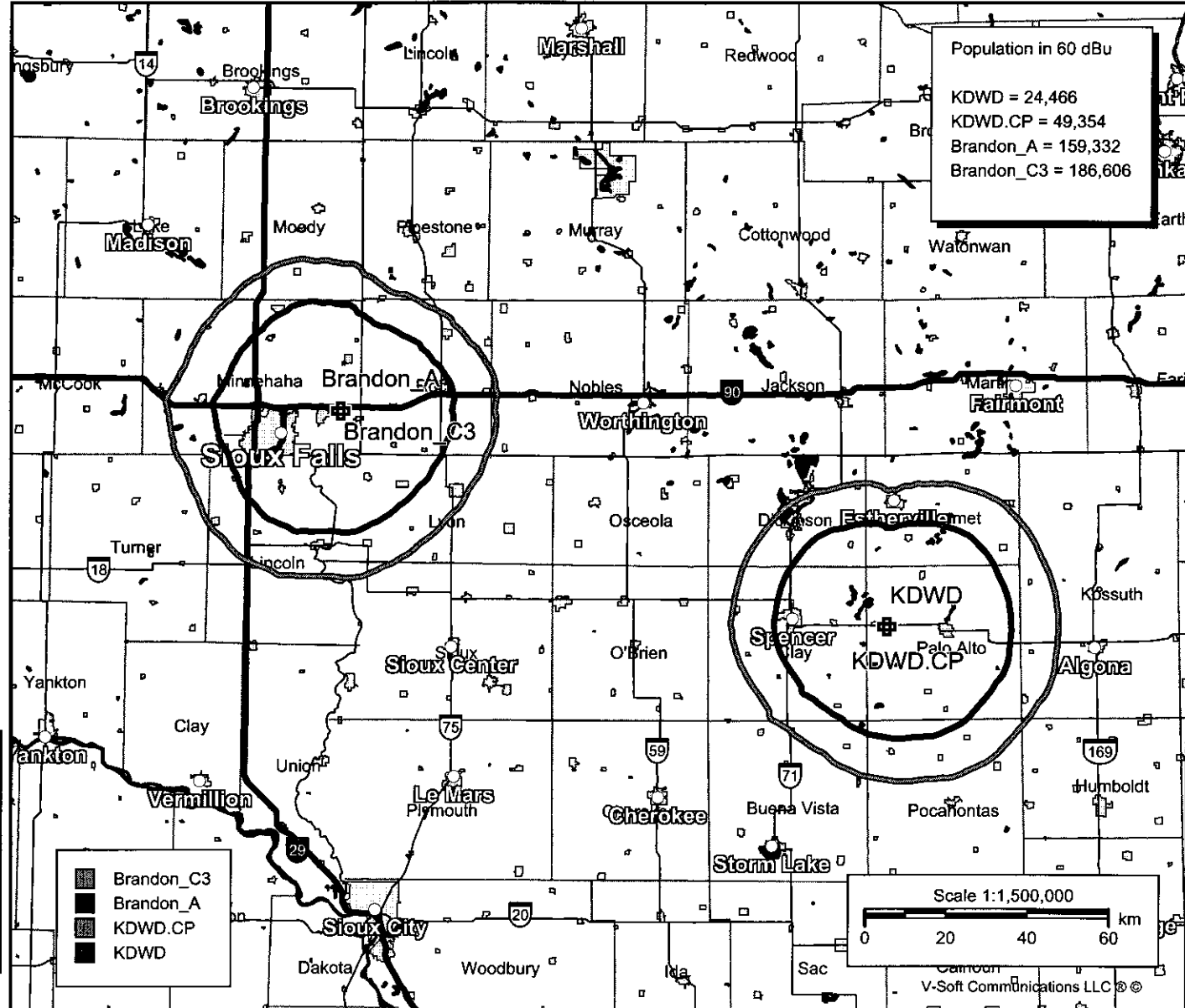
Brandon\_A  
Latitude: 43-36-01 N  
Longitude: 096-31-15 W  
Class A  
ERP: 6.00 kW  
Channel: 261  
Frequency: 100.1 MHz  
AMSL Height: 539.13 m

KDWD.CP  
BPH20021113AAS  
Latitude: 43-07-24 N  
Longitude: 094-51-28 W  
Class C3  
ERP: 16.00 kW  
Channel: 261  
Frequency: 100.1 MHz  
AMSL Height: 535.0 m

KDWD  
BLH19980917KC  
Latitude: 43-07-24 N  
Longitude: 094-51-29 W  
Class A  
ERP: 3.90 kW  
Channel: 261  
Frequency: 100.1 MHz  
AMSL Height: 535.0 m

## Population in 60 dBu

KDWD = 24,466  
KDWD.CP = 49,354  
Brandon\_A = 159,332  
Brandon\_C3 = 186,606



## CERTIFICATE OF SERVICE

I, Sherry L. Schunemann, in the law offices of Smithwick & Belendiuk, P.C., hereby certify that on this 15<sup>th</sup> day of April, 2004, copies of the foregoing Application for Review were sent via First Class Mail, postage pre-paid to the following:

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\*by hand

  
Sherry L. Schunemann